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RESOLUTION OF THE 1ST STANDING COMMITTEE
(Constitutional affairs, affairs of the Prime Minister’s office and home affairs, general legal system of the State and the civil service)

(Rapporteur MAZZONI)

adopted at the sitting of 5 October 2016

ON 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 A STATELESS PERSON (RECAST) (COM (2016) 270 FINAL)

pursuant to Article 144(1) and (6) of the Rules of Procedure

Communicated to the President's Office on 17 October 2016

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The Committee,

Having examined the proposal for a Regulation pursuant to Article 144(1) and (6) of the Rules of Procedure,

Whereas:

the proposal provides for a recast of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 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 ('the Dublin III Regulation').

Recalling that:

on 6 April 2016 the European Commission adopted a communication on the reform of the common European asylum system (COM(2016) 197) containing a comprehensive strategy to establish a fair system for determining the Member State responsible for asylum seekers, reinforcing the Eurodac system and strengthening the European Asylum Support Office (EASO). In this communication, the European Commission recognises the need to move away from a system that places a disproportionate responsibility on certain Member States and encourages uncontrolled and irregular migratory flows to other Member States;

in accordance with this reform plan, on 4 May 2016 the European Commission submitted a package of three proposals concerning the reform of Regulation (EU) No 604/2013 - the 'Dublin III Regulation' (COM(2016) 270), the reform of Regulation (EU) No 603/2013 - Eurodac (COM(2016) 272) and the reform of Regulation (EU) No 439/2010 establishing the EASO (COM(2016) 271), describing it as the first step towards the comprehensive reform of the Common European Asylum System;

on 13 July 2016 the European Commission presented a further package of four proposals to complete the reform of the Common European Asylum System, namely: a proposal establishing a common procedure for international protection (COM(2016) 467); a proposal to reform the Directive on the qualification of third-country nationals or stateless persons as beneficiaries of international protection (COM(2016) 466); a proposal to revise the Directive laying down standards for the reception of applicants for international protection, intended to increase applicants' integration prospects and decrease secondary movements (COM(2016) 465); a proposal to draw up a structured Union resettlement framework aimed at enhancing legal avenues to the EU and progressively reducing the incentives for irregular arrivals (COM(2016) 468);

Whereas:

the core principle of the current Dublin Regulation is that the responsibility for examining a claim lies primarily with the Member State which played the greatest part in the applicant's entry or residence in the EU. The criteria for establishing responsibility run, in hierarchical order, from family

considerations, to recent possession of visa or residence permit in a Member State, to whether the applicant has entered EU irregularly, or regularly. In particular, Article 13 provides that where it is established, on the basis of proof or circumstantial evidence, that an applicant has irregularly crossed the border into a Member State by land, sea or air, having come from a third country, the Member State thus entered shall be responsible for examining the application for international protection. Such responsibility ceases, however, after twelve months from the date on which the irregular border crossing took place;

the Commission explains that the current Dublin system is no longer adequate to ensure a sustainable sharing of responsibility for applicants across the Union and that presently a limited number of individual Member States have to deal with the vast majority of asylum seekers arriving in the Union, putting the capacity of their asylum systems under strain and leading to disregard of EU rules. In particular, it has identified among the weaknesses and shortcomings of the current legislation the complexity of determining the State responsible and the length of procedures, especially when it comes to shifting responsibility between Member States;

to prepare the proposal the Commission commissioned external studies to evaluate the Dublin system. The problems identified mainly concern large secondary movements from the State of first entry to other Member States. These secondary movements have generated multiple applications for asylum: 24 % of the applicants in 2014 had already launched previous applications in other Member States. Consequently, the rules on transfers between Member States fail to be applied, as applicants have been able to submit (or resubmit) applications in the desired Member State of destination. This is largely attributable to the fact that the current Dublin III Regulation does not take Member States' capacity into account, especially when they are facing strong migratory pressure, and places a disproportionate responsibility on Member States at the external border, by mostly applying the criterion of first country of entry. The criteria relating to family links have been less frequently used, mainly due to the difficulty of tracing family or obtaining documentary evidence of family connections;

the European Commission consulted the Member States, some of which called for a permanent system for burden sharing through a distribution key, while others were in favour of keeping and streamlining the current system, including the criterion that the Member State of first entry is responsible for irregular entries;

the main proposed changes to the Regulation involve bolstering the responsibility of the State of first entry and counter-balancing it with a corrective allocation mechanism that is automatically triggered when a Member State is confronted with a disproportionate number of asylum applications;

Noting, in particular, that in the proposal for a Regulation:

Article 3(3) introduces an obligation, before the start of the process of determining the Member State responsible, to check whether the application is inadmissible on the grounds that the applicant comes from a first country of asylum or a safe third country. If this is the case, the applicant will be returned;

the new Article 4 makes explicit the obligation of an applicant who has

entered illegally the territory of the Member States to submit an application in the Member State of first entry and to cooperate in the identification of that State. On this point the new Article 6 underlines that an applicant does not have the right to choose the Member State responsible for examining their application for asylum;

the new Article 5 provides that applicants are not entitled to the reception conditions set out in Articles 14 to 19 of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013, including access to the labour market and education for minors, during the procedures under this Regulation in any Member State other than the one in which he or she is required to be present;

the new Article 9 removes the requirement that Member States must take into consideration any available evidence regarding the presence, on the territory of a Member State, of family members, relatives or any other family relations of the applicant. The definition of family members in Article 2 is also extended by including the sibling or siblings of an applicant and family relations formed after leaving the country of origin but before arrival on the territory of the Member State;

the new Article 15 eliminates the provision that the responsibility of the State of first entry ceases 12 months after the date on which the irregular border crossing took place and the provision determining the State responsible on the basis of unlawful residence of at least five months;

the new Articles 34 *et seq.* establish a corrective allocation mechanism to ensure a fair sharing of responsibility among Member States and applicants' swift access to procedures for granting international protection when a Member State is confronted with a disproportionate number of applications for international protection for which it is the Member State responsible under the Regulation. The mechanism would be triggered when the automatic system indicates that the number of applications for international protection for which a Member State is responsible, in addition to the number of persons effectively resettled, is higher than 150 % of the reference number for that Member State as determined by a reference key. The European Union Agency for Asylum will annually establish the reference key and adjust the figures of the criteria for the reference key (population and GDP) based on Eurostat figures. The Member States will have the possibility of temporarily opting out of the corrective allocation mechanism, for a period of twelve months, by making a contribution of EUR 250 000 per applicant to the Member State that was determined as responsible for examining those applications,

Having regard also to the government's report sent on 25 July 2016, pursuant to Article 6(4) of Law No 234 of 24 December 2012,

Considering, in particular, that:

the government has indicated that the EU proposal in question is of particular national interest, and that the report's assessment of the proposal is generally unfavourable in that it does not contribute to a fair distribution of migrants among Member States but rather reinforces and extends in a number of respects the criterion of first entry, increasing the difficulties of frontline countries such as Italy,

hereby issues an unfavourable opinion.

In terms of upholding the principles of subsidiarity and proportionality the proposal presents the following problems:

The objectives of the proposal, those of a fair sharing of responsibility among Member States, especially in times of crisis, and of curbing secondary movements of third-country nationals between Member States, cannot be sufficiently achieved by the Member States alone. However, the measures and mechanisms proposed do not meet the need for Europe as a whole to address the current unprecedented migration, and the overall effect of the proposed changes will not lead to the achievement of these two objectives;

the new Article 3's introduction of an obligation to check, before the start of the Dublin procedure, whether the application is admissible if the applicant comes from a first country of asylum or a safe third country would entail a significant increase in the number of applications to be examined by a country of first entry such as Italy. Moreover, such a mechanism would increase the cases where Italy would become the State responsible, which also has implications for the duration of reception and the return of persons not entitled to international protection. This increased burden would be counterproductive to achievement of the objectives set out in the proposal;

the new Article 10(5) on minors provides that in the absence of a family member the Member State responsible should be the one where the minor first lodged his or her application for international protection, unless this is contrary to the child's best interests, and that in the case of applications for asylum made in more than one State, jurisdiction is conferred to the State in which the application was submitted for the first time. We think it would be more in keeping with the interests of the child if responsibility were assigned to the Member State in which the child is present when the application is first lodged;

the changes introduced by the new Article 15, namely the deletion of the provision that the responsibility of the State of first entry ceases 12 months after the first illegal entry and of the provision determining the State responsible on the basis of a continuous irregular stay at least five months, together with the deletion of Article 19, which provides for the termination of a Member State's responsibility if a third-country national voluntarily leaves the territory of the Member States for a certain period of time, and the adding of the sole responsibility principle in the new Article 3(5) constitute measures that strengthen and extend the first-entry criterion, a criterion deemed by the proposal for a Regulation as one of the reasons for the frontline countries' excessive workload in terms of reception, pre-identification and return management, and thus contrary to the stated objectives of the proposal. We therefore believe this proposal should be revised in order to establish mechanisms for determining the State responsible where a distribution key reflecting the size, wealth and absorption capacity of the Member States hosting applicants takes precedence over the first-entry criterion;

concerning the corrective allocation mechanism provided for in Article 34 *et seq.*, we think that the possibility of replacing participation in the mechanism with a financial contribution should be removed in order to pursue effectively the proposal's objective of a fair sharing of responsibility for

applicants on the territory of the Member States. On this point we also have serious doubts about paragraph 4 of the new Article 35, which requires the future European Union Agency for Asylum to establish the reference key to be given to each Member State for the sharing out of asylum seekers on the basis of the corrective allocation mechanism and to adjust it annually on the basis of Eurostat data;

It is also noted that:

one year after the launch of the plan to relocate asylum seekers among European States, the overall number transferred from Italy to other countries remains at 3 % of the target, namely 1 196 persons from a total of 39 600;

between 12 July and 27 September 2016 2 242 people were transferred from Greece and 353 from Italy;

the relocation plan is thus well behind schedule, given that, under commitments made by the European Union in September 2015, 160 000 people should be relocated from Italy, Greece and Hungary to other European states by September 2017. The objective is at least 6 000 relocations a month. But one year later we are stuck at 3 % of the overall target. Currently, the number of places made available by Member States for the relocation programme stands at 13 585 (3 809 for Italy and 9 776 for Greece);

the European Commission's reform proposal claims to achieve the objectives set out above and to correct the apparent failure of the 'Dublin system' by retaining the hierarchy of Dublin criteria substantially unchanged, introducing a corrective mechanism for a fair sharing of responsibility among States that reproduces the problematic aspects of the existing temporary reallocation mechanisms, and by laying down a number of obligations for asylum seekers (and subsequent penalties in the event of non-compliance) in order to restrict movements within the area of the States bound by the Dublin Regulation;

the proposal presented by the European Commission on 4 May as the 'reform of the Dublin Regulation' is no reform at all: apart from some improvements in the procedural time-limits, the transfer of asylum seekers to the Member State potentially responsible is weighed down by the introduction of further intermediate procedures; With the exception of the extended definition of 'family member', none of the criteria for determining the Member State responsible have changed, while the corrective allocation mechanism as proposed here risks failing in the same way as the temporary relocation mechanisms;

accordingly, the proposal to reform the Dublin Regulation does not seem appropriate for achieving the Commission's stated objectives, namely the rapid identification of the Member State responsible and the applicant's swift access to the asylum procedure, a fairer sharing of responsibility among Member States and halting abuses and secondary movements of asylum seekers.

OPINION OF THE 14TH STANDING COMMITTEE
(EUROPEAN UNION POLICIES)

(Rapporteur: ROMANO)

28 September 2016

The Committee, having examined the proposal,

whereas the proposal for a Regulation, which provides for the recast of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 on criteria for determining the Member State responsible for examining an application for international protection ('Dublin III Regulation') is designed to supplement the existing legislative framework with a new corrective allocation mechanism to deal with situations where there is a disproportionate influx of asylum seekers in the Member States;

recalling that:

on 6 April 2016 the European Commission adopted a communication on the reform of the common European asylum system (COM(2016) 197) containing a comprehensive strategy to establish a fair system for determining the Member State responsible for asylum seekers, reinforcing the Eurodac system and strengthening the European Asylum Support Office (EASO). In this communication the European Commission recognises the need to move away from a system that places a disproportionate responsibility on certain Member States and encourages uncontrolled and irregular migratory flows to other Member States;

in accordance with this reform plan, on 4 May 2016 the European Commission submitted a package of three proposals concerning the reform of Regulation (EU) No 604/2013 - the 'Dublin III Regulation' (COM(2016) 270), the reform of Regulation (EU) No 603/2013 - Eurodac (COM(2016) 272) and the reform of Regulation (EU) No 439/2010 establishing the EASO (COM(2016) 271), describing it as the first step towards the comprehensive reform of the Common European Asylum System;

on 13 July 2016 the European Commission presented a further package of four proposals to complete the reform of the Common European Asylum System, namely: a proposal establishing a common procedure for international protection (COM(2016) 467); a proposal to reform the Directive on the qualification of third-country nationals or stateless persons as beneficiaries of international protection (COM(2016) 466); a proposal to revise the Directive laying down standards for the reception of applicants for international protection, intended to increase applicants' integration prospects and decrease secondary movements (COM(2016) 465); a proposal to draw up a structured Union resettlement framework, aimed at enhancing legal avenues to the EU and

progressively reducing the incentives for irregular arrivals (COM(2016) 468);

whereas the core principle of the current Dublin Regulation is that the responsibility for examining a claim lies primarily with the Member State which played the greatest part in the applicant's entry or residence in the EU. The criteria for establishing responsibility run, in hierarchical order, from family considerations, to recent possession of visa or residence permit in a Member State, to whether the applicant has entered EU irregularly, or regularly. In particular, Article 13 provides that where it is established, on the basis of proof or circumstantial evidence, that an applicant has irregularly crossed the border into a Member State by land, sea or air, having come from a third country, the Member State thus entered shall be responsible for examining the application for international protection. Such responsibility ceases, however, after twelve months from the date on which the irregular border crossing took place;

noting that the Commission explains that the current Dublin system is no longer adequate to ensure a sustainable sharing of responsibility for applicants across the Union and that presently a limited number of individual Member States have to deal with the vast majority of asylum seekers arriving in the Union, putting the capacities of their asylum systems under strain and leading to disregard of Union rules. In particular, it has identified among the weaknesses and shortcomings of the current legislation the complexity of determining the State responsible and the length of procedures, especially when it comes to shifting responsibility between Member States;

whereas in order to prepare the proposal the Commission commissioned external studies to evaluate the Dublin system. The problems identified mainly concern large secondary movements from the State of first entry to other Member States. These secondary movements have generated multiple applications for asylum: 24 % of the applicants in 2014 had already submitted previous applications in other Member States. Consequently, the rules on transfers between Member States fail to be applied, as applicants have been able to submit (or resubmit) applications in the desired Member State of destination. This is largely attributable to the fact that the current Dublin III Regulation does not take Member States' capacity into account, especially when they are facing strong migratory pressure, and places a disproportionate responsibility on Member States at the external border, by mostly applying the criteria of first country of entry. The criteria relating to family links have been less frequently used, mainly due to the difficulty of tracing family or obtaining documentary evidence of family connections;

whereas, furthermore, the European Commission consulted the Member States, some of which called for a permanent system for burden sharing through a distribution key, while others were in favour of keeping and streamlining the current system, including the criterion that the Member State of first entry is responsible for irregular entries;

the main proposed changes to the Regulation involve bolstering the responsibility of the State of first entry by counter-balancing it with a corrective allocation mechanism that is automatically triggered when a Member State is confronted with a disproportionate number of asylum applications; in the view of the fact that in the proposal for a Regulation:

Article 3(3) introduces an obligation, before the start of the process of

determining the Member State responsible, to check whether the application is inadmissible on the grounds that the applicant comes from a first country of asylum or a safe third country. If this is the case, the applicant will be returned;

the new Article 4 makes explicit the obligation of an applicant who has entered illegally the territory of the Member States to submit an application in the Member State of first entry and to cooperate in the identification of that State. On this point the new Article 6 underlines that an applicant does not have the right to choose the Member State responsible for examining their application for asylum;

the new Article 5 provides that applicants are not entitled to the reception conditions set out in Articles 14 to 19 of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013, including access to the labour market and education for minors, during the procedures under this Regulation in any Member State other than the one in which he or she is required to be present;

the new Article 9 removes the requirement that Member States must take into consideration any available evidence regarding the presence, on the territory of a Member State, of family members, relatives or any other family relations of the applicant. The definition of family members in Article 2 is also extended by including the sibling or siblings of an applicant and family relations formed after leaving the country of origin but before arrival on the territory of the Member State;

the new Article 15 eliminates the provision that the responsibility of the State of first entry ceases 12 months after the date on which the irregular border crossing took place and the provision determining the State responsible on the basis of unlawful residence of at least five months;

the new Articles 34 *et seq.* establish a corrective allocation mechanism to ensure a fair sharing of responsibility between Member States and a swift access of applicants to procedures for granting international protection when a Member State is confronted with a disproportionate number of applications for international protection for which it is the Member State responsible under the Regulation. The mechanism would be triggered when the automatic system indicates that the number of applications for international protection for which a Member State is responsible, in addition to the number of persons effectively resettled, is higher than 150 % of the reference number for that Member State as determined by a reference key. The European Union Agency for Asylum will annually establish the reference key and adjust the figures of the criteria for the reference key (population and GDP) based on Eurostat figures. The Member States will have the possibility of opting out of the corrective allocation mechanism temporarily, for a period of twelve months, but in return they must pay a contribution of EUR 250 000 per applicant to the Member State that was determined as responsible for examining those applications.

having regard also to the government's report sent on 25 July 2016, pursuant to Article 6(4) of Law No 234 of 24 December 2012,

whereas, in particular, the government has indicated that the EU proposal in question is of particular national interest, and that the report's assessment of the proposal is generally negative, in that it does not contribute to a fair distribution of migrants between Member States but rather reinforces and

extends in a number of respects the criterion of first entry, increasing the difficulties of frontline countries such as Italy,

hereby issues an unfavourable opinion within its area of competence, with the following remarks:

the legal basis is correctly identified as Article 78(2)(e) of the Treaty on the Functioning of the European Union (TFEU), which provides for the ordinary legislative procedure for adopting measures concerning a Common European Asylum System, including criteria and mechanisms for determining the Member State responsible for examining an application for asylum or subsidiary protection. Furthermore, it is the same legal basis as that of Regulation (EU) No 604/2013, which it is intended to reform;

as regards the principles of subsidiarity and proportionality, however, there are significant problems, as explained below:

the objectives of the proposal, those of a fair sharing of responsibility among Member States, especially in times of crisis, and of curbing secondary movements of third-country nationals between Member States, cannot be sufficiently achieved by the Member States alone. The measures and mechanisms proposed do not meet the need for Europe as a whole to address the current unprecedented migration, and the overall effect of the proposed changes will not lead to the achievement of the above two objectives;

the new Article 3's introduction of an obligation to check, before the start of the Dublin procedure, whether the application is admissible if the applicant comes from a first country of asylum or a safe third country would entail a significant increase in the number of applications to be examined by a first country of entry such as Italy. Moreover, such a mechanism would increase the cases where Italy would become the State responsible, which also has implications for the duration of reception and the return of persons not entitled to international protection. This increased burden would be counterproductive to achievement of the objectives set out in the proposal;

The new Article 10(5) on minors provides that, in the absence of a family member, the Member State responsible should be the one where the minor has lodged the application for international protection, unless this is contrary to the child's best interests, and that in the case of applications for asylum made in Pili States, jurisdiction is conferred to the State in which was submitted for the first time in the application. We think it would be more in keeping with the interests of the child if responsibility were assigned to the Member State in which the child is present when the application is first lodged;

the changes introduced by the new Article 15, namely the deletion of the provision that the responsibility of the State of first entry ceases 12 months after the first illegal entry and of the provision determining the State responsible on the basis of a continuous irregular stay at least five months, together with the deletion of Article 19, which provides for the termination of a Member State's responsibility if a third-country national voluntarily leaves the territory of the Member States for a certain period of time, and the adding of the sole responsibility principle in the new Article 3(5) constitute measures that strengthen and extend the first-entry criterion, a criterion deemed by the proposal for a Regulation as one of the reasons for the frontline countries' excessive workload in terms of reception, pre-identification and return management, and

thus contrary to the stated objectives of the proposal. We therefore believe this proposal should be revised in order to establish mechanisms for determining the State responsible where a distribution key reflecting the size, wealth and absorption capacity of the Member States hosting applicants takes precedence over the first-entry criterion;

concerning the corrective allocation mechanism provided for in Article 34 *et seq.*, we think that the possibility of replacing participation in the mechanism with a financial contribution should be removed in order to pursue effectively the proposal's objective of a fair sharing of responsibility for applicants on the territory of the Member States. On this point we also have serious doubts about paragraph 4 of the new Article 35, which requires the future European Union Agency for Asylum to establish the reference key to be given to each Member State for the sharing out of asylum seekers on the basis of the corrective allocation mechanism and to adjust it annually on the basis of Eurostat data.

The competent Committee should thus issue a reasoned unfavourable opinion pursuant to Protocol 2 to the Treaty on the Functioning of the European Union on the application of the principles of subsidiarity and proportionality.