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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 on 19 October 2016*

ON THE

**PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN STANDARDS FOR THE RECEPTION OF APPLICANTS FOR INTERNATIONAL PROTECTION (RECAST)**

**(COM (2016) 465 final)**

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

**Sent to the President's Office on 25 October 2016**

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The Committee,

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

whereas:

the proposal for a Directive, part of a general reform of the European asylum system, provides for a recast of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 ('reception conditions Directive') to further harmonise reception conditions in the EU, increase applicants' integration prospects and reduce secondary movements;

the proposal would introduce the following new elements into the current reception conditions Directive:

in Article 2, the definition of material reception conditions is expanded:

Article 7 includes a new list of cases in which asylum applicants may be required to reside in a specific place in view of the risk of their absconding. For the same eventuality, as well as for non-compliance with procedures, Article 19 provides that daily allowances may be reduced or withdrawn, with the exception of essential allowances, which may be replaced with material reception conditions in kind;

in Article 8, another ground is added for detaining applicants where there is a risk of their absconding;

in Article 15, the time limit for access to the labour market is reduced from a maximum of nine months to a maximum of six months from the date of the application for international protection. Moreover, the right of Member States to prioritise EU citizens is removed and replaced by the right merely to verify whether a vacancy could be filled by a European citizen. A third paragraph is also added, designed to ensure that asylum seekers enjoy the same working conditions as those enjoyed by nationals of the Member State,

whereas:

the legal base has been correctly identified as Article 78(2)(f) of the Treaty on the Functioning of the European Union (TFEU), which provides that the ordinary legislative procedure is to be used for the adoption of measures for a common European asylum policy, which include reception conditions for applicants for asylum or subsidiary protection. It is also the same legal basis as that for the subject of the recast, namely Directive 2013/33/EU;

the proposal requires the Member States to take into account the operational standards and indicators on reception conditions, developed by the EASO (or future European Union Agency for Asylum), when monitoring and controlling their reception systems (Article 27);

the proposal requires Member States to draw up (and periodically update) a contingency plan setting out the measures to be taken to ensure adequate reception of applicants where the Member State is confronted with a disproportionate number of applicants for international protection (Article 28). It also requires Member States to inform the Commission and the European Agency for Asylum whenever their contingency plan is activated;

like all the preceding Directives, this proposal aims to reduce the incentives for secondary movements within the European Union associated with reception conditions. Accordingly, the Commission stresses the need to keep applicants in the Member State responsible for their application and ensure that they do not abscond, in order to guarantee orderly management of migration flows and identification of the Member State responsible, and to avoid secondary movements. It also points out that introducing more targeted restrictions on the free movement of applicants, and severe consequences for failure to comply with such restrictions will contribute to more effective monitoring of the applicants' whereabouts;

the proposal does not change the fact that applicants may, as a general rule, move freely within the host Member State or the area assigned to them by the Member State (Article 7(1)). However, for reasons of public interest or public order, for the swift processing and effective monitoring of his or her application for international protection, for the swift processing and effective monitoring of his or her procedure for determining the Member State responsible in accordance with the Dublin Regulation or in order to effectively prevent the applicant from absconding, the proposal requires Member States, where necessary, to assign applicants a residence in a specific place, such as an accommodation centre, a private house, flat, hotel or other premises adapted for housing applicants. Such a decision may be necessary in particular in cases where the applicant has not complied with his or her obligations, as follows: *(a)* for applicants who have not complied with the obligation to make an application for international protection in the first Member State of illegal or legal entry (as set out in Article 4(1) of the proposed reform of the Dublin Regulation) and have travelled to another Member State without adequate justification and made an application there; *(b)* the applicant has absconded from the Member State in which he or she is required to be present; *(c)* the applicant has been sent back to the Member State where he or she is required to be present after having absconded to another Member State;

an additional reason for detention is thus added: if an applicant has been assigned a specific place of residence but has not complied with this obligation, and where there is a continued risk that the applicant may abscond, the applicant may be detained in order to ensure the fulfilment of the obligation to reside in a specific place (Article 8(3)(c));

the proposal also reduces the time-limit for access to the labour market from no later than nine months to no later than six months from the date when the application for international protection was lodged, where an administrative decision on the application has not been taken in accordance with the proposed 'Procedures Regulation' and the delay cannot be attributed to the applicant (Article 15(1)(1));

pursuant to Article 6(4) of Law No 234 of 24 December 2012, on 11 October 2016 the Department for European Policies at the Prime Minister's Office sent to both houses the report drawn up by the Ministry of the Interior on this proposal for a Regulation. It does not raise any issues concerning the principle of conferral and accepts that the legal basis is correct and the principle of subsidiarity has been respected;

however, it does say that the part of the proposal that reduces the material reception conditions for minors fails to comply with the principle of proportionality;

the report's overall evaluation of the proposal and its negotiating prospects is positive (apart from the above reservation regarding minors), 'since it contributes to the convergence of national systems, especially as regards harmonisation of the standard of reception conditions in Member States', and it also confirms that the proposal as a whole is consistent with national interests,

noting that:

while the proposal formally complies with the principle of proportionality, in that the proposed measures are confined to what is necessary to achieve its objective, in compliance with Article 5 of the Treaty on European Union, it substantially departs from the principle of subsidiarity, since the objective of further harmonising reception conditions in the European Union in order to increase applicants' prospects of integration cannot be achieved by a further clampdown on secondary movements. While it is true that this objective cannot be sufficiently achieved by Member States acting individually, the combined effect of all the directives, regulations and recasts adopted on this subject so far has shown the Commission's absolute impotence to enforce compliance with the cardinal principles of migratory flow management, namely reception (on the basis of solidarity) and redistribution of applicants, and returns,

opposes the proposal, with the following comments:

Article 17a introduces a new principle whereby if an applicant is present in a Member State other than the one in which he or she is required to be present, that applicant is not entitled to some of the reception conditions as regards the schooling and education of minors (Article 14), access to employment (Article 15), the material reception conditions (Article 16) and the procedures for providing them (Article 17), although Member States must in any case ensure that all applicants have a 'dignified' standard of living (Article 17a and must provide minors with access to suitable educational activities. The Committee considers that this provision, the purpose of which is to penalise the applicant, in some respects also penalises minors, insofar as it excludes them from schooling and education, thereby clearly undermining the principle invoked several times in the Directive itself, as well as in Community, international and national contexts generally, of the best interests of the child (this exclusion will harm children for reasons that cannot be understood). It therefore proposes excluding minors from the restriction of access to the benefits referred to in Article 14, as

well as from other restrictions which, although they are imposed on parents, will inevitably have an impact on children, with particular regard to those provided for in Articles 16 and 17 (material reception conditions and procedures for providing them);

as regards the replacement, reduction or withdrawal of material reception conditions (Article 19), even if one of the measures specified is adopted, a dignified standard of living should in any case be ensured. However, the Committee considers that what constitutes a dignified standard of living (Article 19(4)) should be explicitly specified, and in particular it should be made clear whether the State is to bear the burden of not only health care, but also accommodation, food or other benefits (the concept is so generic that, if its application depends on individual Member States, this could increase disputes at national and Community level, as well as undermining the underlying principle of a harmonised European standard of reception conditions);

whereas a dignified standard of living must in any case be ensured for applicants, the provision should be accompanied by further measures (which could concern detention, as an indicator of the assessed degree of risk posed by the applicant, or simply examining the application, without, however, reducing the associated guarantees), which should be the subject of negotiation;

promotion of safe and legal access remains entirely insufficient, and the emphasis of the document is on secondary movements, i.e. movements of migrants from the country of arrival to other countries in the EU. The country responsible for examining the application remains responsible not only during the procedure, but also afterwards, without any expiry period. This denies any European dimension to the outcomes of asylum procedures and takes no account of the needs and aspirations of the refugees for integration, which would undoubtedly be fostered by the possibility of joining family members residing in other Member States than that in which they first arrived;

overall, in stark contrast with its very *raison d'être*, the proposal entirely weakens the right to asylum in Europe and, rather than improving international protection, tends to make it less secure in Europe and to further increase the burden of duties which the countries of first arrival have to take on;

the reduction in the time limit for access to the labour market from a maximum of nine months to a maximum of six months from the date when the application for international protection was lodged (Article 15(1)(1)) is a step forward in terms of the integration of asylum applicants, but fails to take account of the real employment situation in many Member States;

lastly, it should be pointed out that although there has been talk in recent months of moving beyond the Dublin system and towards an expanded list of countries competent to assess asylum applications, the legislative acts recently adopted by the EU have, on the contrary, all been designed to discourage secondary movements by migrants. Therefore, although the Committee can agree with the objective of guaranteeing the same reception standards in all the Member States, further repercussions for the Member States which, for geographical reasons, are the main initial targets of migrant flows should be avoided.

**OPINION OF THE 14th STANDING COMMITTEE**

(EUROPEAN UNION POLICIES)
(Rapporteur: ROMANO)

5 October 2016

The Committee, having examined the proposal,

whereas the proposal for a Directive, part of a general reform of the European asylum system, provides for a recast of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 ('reception conditions Directive') to further harmonise reception conditions in the EU, improve applicants' integration prospects and reduce secondary movements;

whereas the proposal would introduce the following new elements into the current reception conditions Directive:

in Article 2, the definition of material reception conditions is expanded:

Article 7 includes a new list of cases in which asylum applicants may be required to reside in a specific place in view of the risk of their absconding. For the same eventuality, as well as for non-compliance with procedures, Article 19 provides that daily allowances may be reduced or withdrawn, with the exception of essential allowances, which may be replaced with material reception conditions in kind;

in Article 8, another ground is added for detaining applicants where there is a risk of their absconding;

In Article 15, the time limit for access to the labour market is reduced from a maximum of nine months to a maximum of six months from the date of the application for international protection. Moreover, the right of Member States to prioritise EU citizens is removed and replaced by the right merely to verify whether a vacancy could be filled by a European citizen. A third paragraph is also added, designed to ensure that asylum seekers enjoy the same working conditions as those enjoyed by nationals of the Member State,

comments favourably on the proposal, within its area of responsibility, with the following comments:

the legal base has been correctly identified as Article 78(2)(f) of the Treaty on the Functioning of the European Union (TFEU), which provides that the ordinary legislative procedure is to be used for the adoption of measures for a common European asylum policy, which include reception conditions for applicants for asylum or subsidiary protection. It is also the same legal basis as that for the subject of the recast, namely Directive 2013/33/EU;

the principle of subsidiarity is respected, since the objective of further harmonising reception conditions in the European Union in order to improve the integration prospects of applicants and reduce secondary movements cannot be achieved to a sufficient degree by the Member States acting individually;

the principle of proportionality is respected as the proposed measures are limited to what is necessary to achieve the objective.